

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

07-CR-6028L

v.

JEFFREY T. SWARTZ,

Defendant.

Defendant, Jeffrey T. Swartz (“Swartz”), is charged by indictment in multiple counts with possession and transportation of child pornography and related crimes. I referred all pretrial matters to United States Magistrate Judge Marian W. Payson pursuant to 28 U.S.C. § 636(b). Motions were filed by the defendant, including a motion for a bill of particulars and a motion to suppress evidence obtained as a result of the execution of a search warrant at Swartz’s residence, 146 Green Moor Way, Apt. 7, Henrietta, New York.

After hearing from counsel and reviewing material filed relative to the motion, Magistrate Judge Payson issued a Decision and Order/Report and Recommendation (Dkt. #38). Magistrate Judge Payson denied Swartz’s request for a bill of particulars and further recommended to this Court that Swartz’s motion to suppress also be denied. Objections were filed to the Magistrate Judge’s Decision and the Report and Recommendation by Swartz’s present counsel. The Government replied to those objections.

I. Request for a Bill of Particulars.

Swartz appeals from Magistrate Judge Payson's decision denying his request for a bill of particulars. The test for this Court in its appellate function is whether the Magistrate Judge's decision was clearly erroneous. I find no such error. Based on the nature of the indictment, the voluntary discovery and the matters referenced by Magistrate Judge Payson, Swartz has more than sufficient evidence to understand the nature of the charges and prepare a defense. Magistrate Judge Payson's decision is therefore affirmed.

II. Motion to Suppress.

Swartz claims that the items seized from his apartment on June 15, 2006, should not have been seized because there was no probable cause to support issuance of the warrant. Magistrate Judge Payson, who issued the warrant, initially determined otherwise. I agree.

Magistrate Judge Payson set forth in some detail the facts as set forth in the affidavit submitted as part of the application for the search warrant. Magistrate Judge Payson describes the activity of Special Agent Steven Forrest. That affidavit, and Magistrate Judge Payson's decision, sets forth with great particularity how Agent Forrest and Special Agent Timothy R. Weir determined that the person using AOL screen name "JHawk184" was determined to be Swartz. Several subpoenas were served during the course of the investigation on America On Line, Level 3 Communications, and Frontier Communications to establish the computer link, the telephone and the residence containing the computer at issue. Certainly, the conversations reported in the "chat room" from the individual using the JHawk184 moniker were explicit and detailed concerning the

desire for child pornography. In addition, that subject responded to inquiries and transported various items that appeared to constitute child pornography.


I agree with Magistrate Judge Payson's assessment that probable cause certainly existed for issuance of the warrant for search of the residence and for the computer. Furthermore, I agree with Magistrate Judge Payson that no hearing need be held as requested under authority of *Franks v. Delaware*, 438 U.S. 154 (1978). In addition, I believe that the executing officers relied in good faith on the Magistrate Judge's warrant and, therefore, under principles established in *United States v. Leon*, 468 U.S. 897 (1984), the exclusionary rule should not be applied when the officer relied in good faith on that warrant. For all these reasons, therefore, I agree with Magistrate Judge Payson that Swartz's motion to suppress should be denied in its entirety.

CONCLUSION

Magistrate Judge Marian W. Payson's Decision and Order (Dkt. #38) denying defendant's request for a bill of particulars is affirmed.

Magistrate Judge Payson's Report and Recommendation, also filed as Dkt. #38, is accepted and adopted in its entirety. Defendant's motion to suppress tangible evidence obtained from execution of the search warrant on June 15, 2006, is in all respects denied.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
June 4, 2008.